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Attorney for Claimant
ANTHONY FRANCO

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE 2006 MERCEDES BENZ CLS 55
CA LICENSE NO. 6CQU031,
VIN WDDDJ76X86A031811,
ITS TOOLS AND APPURTENANCES,

ONE 2003 LAND ROVER RANGE ROVER
CA LICENSE NO. 6AMN568,
VIN SALMB11403A109536,
ITS TOOLS AND APPURTENANCES,

\$10,826.00 IN U.S. CURRENCY,

Defendant.

Case No. 08CV1220-IEG(RBB)

**ANSWER TO COMPLAINT
FOR FORFEITURE AND
DEMAND FOR JURY TRIAL**

COMES NOW the Claimant, ANTHONY FRANCO, and in answer to Plaintiff's Complaint for Forfeiture, hereby responds, alleges, and otherwise pleads as follows:

1. Claimant denies each and every allegation set forth in Paragraph 1. of the Complaint for Forfeiture in the conjunctive as well as the disjunctive.

2. Claimant denies each and every allegation set forth in Paragraph 2. of the Complaint for Forfeiture in the conjunctive as well as the disjunctive.

3. Answering Paragraph 3. of the Complaint, Claimant has no information or

1 belief sufficient to enable him to answer the allegations contained therein, and basing his denial on
2 that ground, denies each and every allegation contained therein in the conjunctive as well as the
3 disjunctive.

4 **Count 1**

5 **ONE 2006 MERCEDES BENZ CLS 55 AMG SEDAN**

6 4. Answering Paragraph 4. of the Complaint, Claimant hereby incorporates his
7 responses to Paragraphs 1-3 herein as if fully repeated herein.

8 5. Claimant denies each and every allegation set forth in Paragraph 5. of the
9 Complaint for Forfeiture in the conjunctive as well as the disjunctive

10 6. Claimant denies each and every allegation set forth in Paragraph 6. of the
11 Complaint for Forfeiture in the conjunctive as well as the disjunctive.

12 7. Claimant denies each and every allegation set forth in Paragraph 7. of the Complaint
13 for Forfeiture in the conjunctive as well as the disjunctive.

14 8. Claimant denies each and every allegation set forth in Paragraph 8. of the Complaint
15 for Forfeiture in the conjunctive as well as the disjunctive.

16 9. Answering Paragraph 9. of the Complaint, Claimant has no information or
17 belief sufficient to enable him to answer the allegations contained therein, and basing his denial on
18 that ground, denies each and every allegation contained therein in the conjunctive as well as the
19 disjunctive.

20 10. Answering Paragraph 10. of the Complaint, Claimant has no information or
21 belief sufficient to enable him to answer the allegations contained therein, and basing his denial on
22 that ground, denies each and every allegation contained therein in the conjunctive as well as the
23 disjunctive.

24 **Count 2**

25 **ONE 2003 LAND ROVER RANGE ROVER SUV**

26 11. Answering Paragraph 11. of the Complaint, Claimant hereby incorporates his
27 responses to Paragraphs 1-3 herein as if fully repeated herein.

28 12. Claimant denies each and every allegation set forth in Paragraph 12. of the

1 Complaint for Forfeiture in the conjunctive as well as the disjunctive.

2 13. Claimant denies each and every allegation set forth in Paragraph 13. of the
3 Complaint for Forfeiture in the conjunctive as well as the disjunctive.

4 14. Claimant denies each and every allegation set forth in Paragraph 14. of the
5 Complaint for Forfeiture in the conjunctive as well as the disjunctive.

6 15. Claimant denies each and every allegation set forth in Paragraph 15. of the
7 Complaint for Forfeiture in the conjunctive as well as the disjunctive.

8 16. Answering Paragraph 16. of the Complaint, Claimant has no information
9 or belief sufficient to enable him to answer the allegations contained therein, and basing his denial on
10 that ground, denies each and every allegation contained therein in the conjunctive as well as the
11 disjunctive.

12 17. Answering Paragraph 17. of the Complaint, Claimant has no information
13 or belief sufficient to enable him to answer the allegations contained therein, and basing his denial on
14 that ground, denies each and every allegation contained therein in the conjunctive as well as the
15 disjunctive.

16 **AFFIRMATIVE DEFENSE(S)**

17 **FIRST AFFIRMATIVE DEFENSE**

18 For a further and separate answer to the Complaint, Claimant alleges the subject Complaint as
19 pled fails to state facts sufficient to constitute a cause of action against the defendant properties.

20 **SECOND AFFIRMATIVE DEFENSE**

21 For a further and separate answer to the Complaint, Claimant alleges plaintiff lacked probable
22 cause for the institution of the forfeiture action.

23 **THIRD AFFIRMATIVE DEFENSE**

24 For a further and separate answer to the Complaint, Claimant alleges that the forfeiture in this
25 case is disproportionate, and is a violation of the Eighth Amendment to the United States
26 Constitution.

27 **FOURTH AFFIRMATIVE DEFENSE**

28 For a further and separate answer to the Complaint, Claimant alleges that the searches which

1 led to the seizure of the defendant vehicles and currency violated the Fourth Amendment to the
2 United States Constitution.

3 **JURY DEMAND**

4 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and general federal law,
5 Claimant demands a trial by jury in connection with the subject action.

6 WHEREFORE, claimant prays for judgment as follows:

- 7 1. That the Complaint be dismissed with prejudice;
8 2. That the subject properties be returned to Claimant;
9 3. For reasonable attorney's fees herein and costs of suit; and
10 4. For such other and further relief as the Court may deem just.

11
12 DATED: July 25, 2008

13 /s/ Richard M. Barnett
14 RICHARD M. BARNETT, ESQ.
rmb-atty@pacbell.net

15 Attorney for Claimant
16 ANTHONY FRANCO
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CERTIFICATE OF SERVICE

I, RICHARD M. BARNETT, do hereby state:

That I am a citizen of the United States, over the age of eighteen years, and not a party to the within action.

That my business address is 105 West F Street, 4th Floor, San Diego, California.

That on July 25, 2008, I have caused service of Answer to Complaint for Forfeiture on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies said party:

1. David McNees, Special Assistant U.S. Attorney, Attorney for Plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 25th day of July, 2008, at San Diego, California.

/s/ Richard M. Barnett
RICHARD M. BARNETT